

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KRUEGER INTERNATIONAL, INC.

Plaintiff,

Case No. 07-C-736

v.

FEDERAL INSURANCE COMPANY and ST. PAUL FIRE
AND MARINE INSURANCE COMPANY,

Defendants.

ORDER

Defendants St. Paul Fire and Marine Insurance Company (“St. Paul”) and Federal Insurance Company (“Federal Insurance”) have each filed a motion to consolidate this case with Case No. 06-C-628, Studio & Partners, s.r.l. v. KI. The motivation for consolidation is the defendants’ desire that Studio & Partners (“S&P”) be “bound” by any coverage determination this court makes in this case. The underlying case has been dismissed, however, and a recent motion for reconsideration has been denied. As there are no remaining issues in the underlying case, there is no appreciable need for consolidation of this coverage action with the action on the merits.

It seems instead that the motions for consolidation are really an effort to join S&P as a party to the above-captioned coverage action so that the decision becomes *res judicata* as to S&P. But that question is more complex than the discretionary considerations at stake in Rule 42, which are largely based on efficiency. Fed. R. Civ. P. 42(a). If the defendants believe S&P is truly a necessary party, they may attempt to join it in this case. If S&P does not become a party, the defendants may attempt to use the decision as *res judicata* against S&P, should S&P have any interest in litigating the matter itself. But those are questions for another day. Consolidation is not

a substitute either for joining a non-party or for ensuring that a given decision has preclusive effect; in fact, it is only happenstance that consolidation is even feasible here (i.e., that the two actions are both pending in this court). It seems clear that the question of *res judicata* should be dealt with at the proper time, and through proper channels, rather than through motions for consolidation.

Accordingly, the motions to consolidate are **DENIED**.

SO ORDERED this 20th day of February, 2008.

s/ William C. Griesbach
Honorable William Griesbach
United States District Judge